IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO.446 OF 2004.

WITH

CRIMINAL APPLICATION NO.1705 OF 2004

Sohail Ahmed Azimulla Khan : Appellant.

versus.

The State of Maharashtra : Respondent.

Mr.Nitin Sejpal for the appellant.

Mr.A.M.Shringarpure, APP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 24th August 2004.

P.C.

1. This appeal was admitted last time and the matter was kept today for hearing of the bail application. On last occasion counsel for the accused contended that the accused has been awarded maximum sentence of ten years and he is in custody since 1st December 2002. The accused does not want to contest the case on merits but

only prays for reduction of sentence. Time was given to the advocate for the accused to take instructions in this regard. Today, he contended that he has taken the necessary instructions and his only submission is that since no injury was caused and no weapon was used in the robbery by this accused, the sentence awarded is too harsh. Therefore, he prays that looking to the nature of incident, the age of the accused i.e. 26 years and the accused is in custody since 1st December 2002, the sentence awarded should be reduced to minimum possible.

2. The learned APP did not oppose hearing the appeal on this aspect of the matter finally. Therefore, arguments were heard.

3. The case of the prosecution is that informant Hemkant Kaluram Gadhe has taken his mother Savita for Medical treatment in Kamshet town. After taking the treatment they were waiting for bus at Kamshet bus stand. At that time one Tata sumo car came there. Accused Nos. 1 to 6 were sitting in the car. Lift was offered to Hemkant. Therefore, Hemkant and his mother sat in the sumo car. The car was found to be

proceeding not towards Khopoli but to Panvel. Hemkant and his mother were asked to give their ornaments. Hemkant was assaulted. Savita was asked to get down after Hemakant was earlier asked to get down. In this background of the matter, the accused came to be convicted. The accused has been identified by both Hemkant and his mother Savita. There is no recovery of any ornaments from him. No specific role is attributed to him. Only allegations against him are that he was there along with others and he pressed Hemkant under the seat. The learned APP made a statement that there are no criminal antecedents against this accused. And therefore considering this fact and that the accused is in custody since 1st December 2002, this is a fit case where lenient view is required to be taken and his sentence is required to be reduced. Hence the appeal is partly allowed. The conviction of the accused under all the sections is maintained. However, his sentence under Sections 395 and 342 of the Indian Penal Code as given by the trial Court of ten years is reduced to five years. He will pay fine of Rs.2000/- each in default R.I. for one year each. Appeal is disposed of accordingly. In view of this

order, the application does not survive, it is disposed of.

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